

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT KNOXVILLE

Assigned on Briefs July 27, 2004

STATE OF TENNESSEE v. CHARLES WILLIAMS

Appeal from the Criminal Court for Sullivan County
No. S46,764 R. Jerry Beck, Judge

No. E2003-02517-CCA-R3-CD - Filed October 26, 2004

The appellant, Charles Williams, was convicted by a jury for possession of over .5 grams of cocaine with intent to sell and conspiracy to possess over .5 grams of cocaine with intent to sell. After a sentencing hearing, the trial court sentenced the appellant as a Range II Offender to eighteen years on the possession with intent to sell conviction and eight years on the conspiracy conviction, to be served concurrently for an effective sentence of eighteen years. The appellant was also fined a total of \$20,000 for the two convictions. After the denial of a motion for new trial, the appellant presents the following issues on appeal: (1) whether the evidence was sufficient to support the jury verdict; and (2) whether the convictions for both possession of cocaine and conspiracy to possess cocaine violate the appellant's due process rights per State v. Anthony, 817 S.W.2d 299 (Tenn. 1991). Because the evidence is sufficient to support the jury verdict and we have determined that the appellant's due process rights were not violated, we affirm the judgment of the trial court.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Trial Court is Affirmed.

JERRY L. SMITH, J., delivered the opinion of the court, in which DAVID H. WELLES and JAMES CURWOOD WITT, JR., JJ., joined.

Gene G. Scott, Jr., Johnson City, Tennessee, for the appellant, Charles Williams.

Paul G. Summers, Attorney General & Reporter; Helena W. Yarborough, Assistant Attorney General; Greeley Wells, District Attorney General; and James F. Goodwin, Assistant District Attorney General, for the appellee, State of Tennessee.

OPINION

Factual Background

On February 16, 2002, Officer Cliff Ferguson of the Kingsport Police Department was conducting surveillance of suspected drug activity at the Kingsport Inn. Using binoculars, Officer Ferguson sat in his cruiser in a nearby driveway and watched for drug activity in room 216A.

Around 12:15 a.m., Officer Ferguson saw a gold Saturn pull into the parking lot of the condominiums next door to the Kingsport Inn. Three men exited the vehicle. Initially, Officer Ferguson thought the men were headed for the condos, but all three men walked to the hotel and went directly to room 216A. Officer Ferguson recognized the three men as Randall King, Escubio Lang, and the appellant.

About five minutes after entering the hotel room, Randall King came out of the room and placed a package in a bush directly outside the room. King pushed the package deep into the middle of the bush, straightened the leaves with his hands, walked around the bush several times, and then went back into room 216A. Then, the appellant came out of the room, stared at the bush, walked approximately 50 to 75 feet down to the end of the walkway away from the hotel room, stopped, turned around, and walked back to the room, staring at the bush the entire time. As the appellant was re-entering the room, he looked over his shoulder at the bush where King had placed the package. Shortly thereafter, all three men exited the hotel room single file, each of them staring at the bush where King had placed the package. The men walked back to the car and left the area.

Officer Ferguson then called Officers Crawford and Summey to meet him at the Kingsport Inn. Officer Summey retrieved the package from the bush and discovered that it consisted of a large plastic bag which contained nineteen smaller plastic bags holding small rocks of what appeared to be cocaine. Officers Summey and Crawford left the area after this discovery so that Officer Ferguson could continue his surveillance.

At around 1:30 a.m., the three men returned to the hotel, again pulling the vehicle into the parking lot for the condominiums. King exited the vehicle while Lang and the appellant waited in the car with the motor running. King looked in the bush, presumably for the package, before entering the hotel room. Meanwhile, Officer Ferguson radioed for Officers Summey and Crawford to return. Lang and the appellant were arrested while still waiting in the car and King was arrested inside room 216A.

King consented to a search of the room where officers retrieved a large rock-like cocaine substance in a plastic bag behind the dresser, a small amount of marijuana on the dresser under a gym bag and four individually wrapped rocks of cocaine in the bathroom. There was no drug paraphernalia or items that could be used to consume the drugs in the room. The appellant first denied any knowledge of the drugs, but later admitted that he knew King had crack cocaine. The total weight of all the crack cocaine found was 17.1 grams.

The appellant was indicted by the Sullivan County Grand Jury for possession with intent to sell or deliver over .5 grams of cocaine, simple possession of marijuana and conspiracy to possess

over .5 grams of cocaine with intent to sell or deliver. After a jury trial, the appellant was convicted of possession of over .5 grams of cocaine with intent to sell and conspiracy to possess over .5 grams of cocaine with intent to sell. The appellant was found not guilty on the possession of marijuana charge. The trial court sentenced the appellant as a Range II Offender to eighteen years on the possession with intent to sell conviction and eight years on the conspiracy conviction and ordered the sentences to run concurrently. The appellant filed a motion for new trial, which was denied by the trial court. This appeal followed.

Alleged Violation of State v. Anthony

Initially, the appellant argues on appeal that the convictions for both the offenses of criminal conspiracy to possess greater than .5 grams of cocaine with the intent to sell or deliver and possession of more than .5 grams of cocaine with the intent to sell “violate his right to due process guaranteed by Article One section eight of the Tennessee Constitution.” The appellant cites State v. Anthony, 817 S.W.2d 299 (Tenn. 1991), in support of his argument. Specifically, he argues that multiple convictions are prevented where proof of one crime is incidental to proof of the other crime. The State argues that Anthony is inapplicable to the facts of the case herein.

In Anthony, our supreme court addressed the issue of whether dual convictions for armed robbery and aggravated kidnapping violated the due process guarantees of Article I, section eight of the Tennessee Constitution. The court concluded that when a confinement, movement, or detention is “essentially incidental” to an accompanying felony, such as robbery or rape, it is not sufficient to

support a separate conviction for kidnapping. Id. at 306. The court warned that the kidnapping statute should be narrowly construed “so as to make its reach fundamentally fair and to protect the due process rights of every citizen. . . .” Id.

There are significant distinctions between this case and Anthony. In Anthony, our supreme court was concerned about the fact that proving one felony, the armed robbery, inherently and necessarily proved the elements of the second felony, kidnapping. While in this case, we are examining whether the proof of the elements of possession of cocaine with the intent to sell inherently or necessarily prove the elements of conspiracy. This court has already determined that “convictions for both the sale of cocaine and the conspiracy to sell cocaine do not violate double jeopardy.” State v. Thornton, 10 S.W.3d 229, 240 (Tenn. Crim. App. 1999). In so doing, this Court determined that:

There will always be a nexus between the conspiracy and the substantive offense when the latter offense is completed. A conspiracy, however, would rarely be “essentially incidental” to the underlying offense, as that term is used in Anthony. In Anthony, it was “essentially incidental” to the robbery that the defendant contain his victims. . . .

Moreover, the statute prohibiting conspiracies is designed to combat a danger posed to the public that is different from the danger sought to be prevented by the drug statutes. The plan and design of two or more individuals to sell cocaine creates

an offense that is worthy of its own punishment

Thornton, 10 S.W.3d at 240-41. Finally, Tennessee Code Annotated section 39-12-106(c) allows a person to be convicted of conspiracy and the “offense which was the object of the conspiracy.” Tenn. Code Ann. § 39-12-106(c). According to the Sentencing Commission Comments, the conspiracy and the underlying offense do not merge, thereby allowing an offender to be convicted of both conspiracy and the object offense.

Accordingly, we determine that while there may indeed be a connection between the conspiracy and the possession of the cocaine, the conspiracy was not “essentially incidental” to the possession such that would constitute a violation of double jeopardy. The appellant was certainly capable of possessing the cocaine without engaging in a conspiracy or, conversely, could have entered into the conspiracy without possessing the drugs. See e.g., State v. Marcus Thompson, No. E2001-02521-CCA-R3-CD, 2003 WL 21999376 (Tenn. Crim. App. at Knoxville, Aug. 22, 2003), perm. to appeal denied (Tenn. 2004) (determining that defendant’s convictions for possession of cocaine with intent to sell and for selling cocaine were not “essentially incidental” to the conspiracy conviction in violation of Anthony). Further, Tennessee Code Annotated section 39-12-106(c) allows convictions for both conspiracy and the target offense. See Tenn. Code Ann. § 39-12-106(c). This issue is without merit.

Sufficiency of the Evidence

The appellant next challenges the sufficiency of the evidence. When a defendant challenges the sufficiency of the evidence, this Court is obliged to review that claim according to certain well-settled principles. A verdict of guilty, rendered by a jury and “approved by the trial judge, accredits the testimony of the” State’s witnesses and resolves all conflicts in the testimony in favor of the State. State v. Cazes, 875 S.W.2d 253, 259 (Tenn. 1994); State v. Harris, 839 S.W.2d 54, 75 (Tenn. 1992). Thus, although the accused is originally cloaked with a presumption of innocence, the jury verdict of guilty removes this presumption “and replaces it with one of guilt.” State v. Tuggle, 639 S.W.2d 913, 914 (Tenn. 1982). Hence, on appeal, the burden of proof rests with the defendant to demonstrate the insufficiency of the convicting evidence. Id. The relevant question the reviewing court must answer is whether any rational trier of fact could have found the accused guilty of every element of the offense beyond a reasonable doubt. See Tenn. R. App. P. 13(e); Harris, 839 S.W.2d at 75. In making this decision, we are to accord the State “the strongest legitimate view of the evidence as well as all reasonable and legitimate inferences that may be drawn therefrom.” See Tuggle, 639 S.W.2d at 914. As such, this Court is precluded from re-weighing or reconsidering the evidence when evaluating the convicting proof. State v. Morgan, 929 S.W.2d 380, 383 (Tenn. Crim. App. 1996); State v. Matthews, 805 S.W.2d 776, 779 (Tenn. Crim. App. 1990). Moreover, we may not substitute our own “inferences for those drawn by the trier of fact from circumstantial evidence.” Matthews, 805 S.W.2d at 779.

Further questions concerning the credibility of the witnesses and the weight and value to be given to the evidence, as well as all the factual issues raised by the evidence, are resolved by the trier of fact and not this Court. State v. Pruett, 788 S.W.2d 559, 561 (Tenn. 1990). “A jury verdict approved by the trial judge accredits the testimony of the witnesses for the State and resolves all conflicts in favor of the State’s theory.” State v. Williams, 657 S.W.2d 405, 410 (Tenn. 1983), cert. denied, 465 U.S. 1073 (1984).

On appeal, the appellant argues that the evidence was insufficient to support the jury verdict. Specifically, he argues that there was insufficient evidence that he possessed the cocaine, even constructively, and that there was no evidence whatsoever of a conspiracy. The State counters that the evidence was sufficient to support the verdict.

In the case herein, the appellant was convicted of violating Tennessee Code Annotated section 39-17-417(a)(4) and section 39-12-103. Tennessee Code Annotated section 39-17-417(a)(4) makes it unlawful to “possess a controlled substance with intent to manufacture, deliver or sell such controlled substance.” Thus, in order to convict the appellant, the State was required to show: (1) a knowing mental state; (2) possession of cocaine; (3) an intent to sell that cocaine; and (4) that the weight of the cocaine exceeded .5 grams. Tenn. Code Ann. § 39-17-417. The State unquestionably proved beyond a reasonable doubt that the substance found in the hotel was crack cocaine and that the weight of the cocaine exceeded .5 grams. Thus, the question is whether the appellant knowingly possessed the cocaine with the intent to sell it.

“[A] person . . . acts knowingly with respect to the conduct or to circumstances surrounding the conduct when the person is aware of the nature of the conduct or that the circumstances exist.” Tenn. Code Ann. § 39-11-302(b). A conviction for possession of cocaine may be based upon either actual or constructive possession. State v. Shaw, 37 S.W.3d 900, 903 (Tenn. 2001); State v. Brown, 823 S.W.2d 576, 579 (Tenn. Crim. App. 1991); State v. Cooper, 736 S.W.2d 125, 129 (Tenn. Crim. App. 1987). Before a person can be found to constructively possess a drug, it must appear that the person has the power and intention at any given time to exercise dominion and control over the drugs either directly or through others. State v. Patterson, 966 S.W.2d 435, 445 (Tenn. Crim. App. 1997); State v. Williams, 623 S.W.2d 121, 125 (Tenn. Crim. App. 1981). The mere presence of a person in an area where drugs are discovered is not, alone, sufficient to support a finding that the person possessed the drugs. Cooper, 736 S.W.2d at 129. Likewise, mere association with a person who does in fact control the drugs or property where the drugs are discovered is insufficient to support a finding that the person possessed the drugs. State v. Transou, 928 S.W.2d 949, 956 (Tenn. Crim. App. 1996). However, circumstantial evidence alone may be sufficient to support a conviction. State v. Tharpe, 726 S.W.2d 896, 899-900 (Tenn. 1987); State v. Gregory, 862 S.W.2d 574, 577 (Tenn. Crim. App. 1993). The circumstantial evidence must be not only consistent with the guilt of the accused, but it must also be inconsistent with innocence and must exclude every other reasonable theory or hypothesis except that of guilt. Tharpe, 726 S.W.2d at 900. In addition, “‘it must establish such a certainty of guilt of the accused as to convince the mind beyond a reasonable doubt that [the defendant] is the one who committed the crime.’” Id. (quoting Pruitt v. State, 460 S.W.2d 385, 390 (Tenn. Crim. App. 1970)). Further, the trier of fact may infer from the amount of cocaine, along

with relevant facts surrounding the arrest, that the cocaine was possessed for the purpose of selling it.¹ Tenn. Code Ann. § 39-17-419.

When viewed in a light most favorable to the State, the facts as introduced at trial show that the appellant was in the car that drove up to the condominiums next to the Kingsport Inn together with King and Lang. The three men exited the car and went straight for room 216A. Within five minutes, King exited the room, placed a bag containing 19 individually-wrapped crack cocaine rocks into the bush directly in front of the room and pushed the bag down deep into the bush to conceal it. After King returned to the room, the appellant exited the room, immediately turning his head to look at the same bush. He walked toward the end of the walkway, turned around and walked back to the room. As he walked back to the room, the appellant continued to look at the bush, even looking over his shoulder as he entered the room. The three men left the hotel together several minutes later in a single-file line, each looking at the bush on their way out. The three men got into the car and left the area. About an hour later, all three men returned to the hotel. Lang and the appellant stayed in the car while King exited the car and attempted to retrieve the bag from the bush. When confronted, the appellant initially denied knowledge of the drugs, but later admitted that he knew King had the drugs.

Although the evidence shows that King was the only one seen in direct contact with the crack cocaine, the evidence demonstrates that King was not acting alone. The appellant accompanied King

¹The appellant does not dispute that the cocaine was intended for resale.

and Lang to the hotel. The appellant also exited the room after King hid the drugs in the bush, staring at the bush while he walked down the walkway away from the room and as he returned. All three men walked single-file past the bush on their way out and each man made an effort to look at the location of the hidden drugs. Further, all three men came back to the hotel at a later time together in an attempt to retrieve the drugs. A jury could infer that the appellant had constructive possession of the crack cocaine.

The appellant was also convicted of conspiracy to possess over .5 grams of cocaine with the intent for resale. Criminal conspiracy is committed when two or more people, each having the culpable mental state required for the offense which is the object of the conspiracy and each acting for the purpose of promoting or facilitating the commission of an offense, agree that one or more of them will engage in conduct which constitutes the offense. See Tenn. Code Ann. § 39-12-103.

To prove the existence of a conspiratorial relationship, the State may show that a “mutual implied understanding” existed between the parties. State v. Shropshire, 874 S.W.2d 634, 641 (Tenn. Crim. App. 1993). The conspiracy need not be proved by production of an official or formal agreement, in writing or otherwise. Id. The conspiracy may be demonstrated by circumstantial evidence and the conduct of the participants while undertaking illegal activity. Id. The very concept of a conspiracy connotes some harmonization of design, not equal participation in every individual component of every criminal offense. Id. Additionally, “[t]he commission of an overt act in furtherance of the conspiracy is an essential element of the offense.” Thornton, 10 S.W.3d at 234.

Again, viewing the evidence in a light most favorable to the State, the proof showed that even though King was the only one of the three men seen in actual possession of the drugs, the three men operated as a unit. They arrived at the hotel together, left the hotel together and returned to the hotel later on the night of the incident together. King himself placed the bag of drugs in a bush, but the appellant looked at that particular bush both when he exited the room by himself and when the three men left the hotel room in a single-file line, indicating his knowledge of the placement of the drugs. The jury could have reasonably inferred the existence of an agreement between the appellant, King, and Lang to sell the cocaine. See, e.g., State v. Yasmond Fenderson, No. 03C01-9711-CR-00496, 1999 WL 2840, at *4 (Tenn. Crim. App. at Knoxville, Jan. 6, 1999) (finding that although the State presented no direct proof of an agreement between conspirators, a jury may reasonably infer the existence of such an agreement from the conspirators' acts).

We determine that the evidence is sufficient to sustain both of the appellant's convictions. While this evidence is not overwhelming, it need not be. The evidence is sufficient to support the jury's determination in that "it fairly and legitimately tends to connect the defendant with the commission of the crime charged." See State v. Bigbee, 885 S.W.2d 797, 803 (Tenn. 1994), superceded by statute as stated in State v. Stout, 46 S.W.3d 689 (Tenn. 2001). The appellant's argument regarding the weakness of the evidence points primarily to the weight of the evidence, which was to be determined by the jury. Our role on appeal is simply to determine whether the evidence was legally sufficient for any trier of fact to have found the essential elements of the offense beyond a reasonable doubt. We conclude that it was.

Conclusion

For the foregoing reasons, the judgment of the trial court is affirmed.

JERRY L. SMITH, JUDGE